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December 12, 2001

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DEC 12 2001

Magalie Roman Salas, Secretary  
Federal Communications Commission  
445 12th Street, S.W., Room TW-A325  
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: MM Docket No. 01-248  
RM-10241  
Amendment of Section 73.202(b)  
Dos Palos and Chualar, California

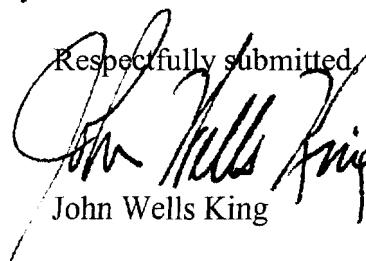
Subject: Request for Leave to File Response And  
Response of Coyote Communications, Inc. to Reply

Dear Ms. Salas:

On behalf of Coyote Communications, Inc., I transmit herewith the original and four copies of its Request for Leave to File Response And Response of Coyote Communications, Inc. to Reply in the above-referenced FM Rule Making proceeding.

Kindly communicate any questions directly to this office.

Respectfully submitted,

  
John Wells King

JWK:ab  
Enclosure  
cc: Dan Alpert, Esquire

No. of Copies rec'd 014  
List A B C D E

Before The  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, DC 20554

In The Matter of	)	
	)	
Amendment of Section 73.202(b)	)	MM Docket No. 01-248
Table Of Allotments	)	RM-10241
FM Broadcast Stations	)	
(Dos Palos and Chualar, California)	)	

TO: The Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**Request for Leave to File Response  
And Response of Coyote Communications, Inc. to Reply**

Coyote Communications, Inc. ("Coyote"), through counsel, hereby requests leave of the Commission to file a response to the Consolidated Reply Comments of KNT0, Inc. ("KNT0"), filed in this proceeding November 28, 2001, and submits its Response thereto as follows:

**Request for Leave**

The Consolidated Reply asserts that Coyote's Counterproposal must be dismissed; that Chualar is a Section 307(b) community; that no *Tuck* showing is required; and that a change of community is warranted. In the course of making these assertions KNT0 utters factual misstatements and miscomprehends applicable Commission policy and precedent. Accordingly, for the purpose of assuring that the Commission has a full, complete, and accurate record in this proceeding, Coyote respectfully requests leave to file this Response to the Consolidated Reply.

### **Big Sur is Not an Area; It is a Community**

Without support of any kind, KNT0 alleges that “local area residents refer to the Big Sur Area as an area extending approximately 25 miles of coast line.” KNT0 Comments at 3. Big Sur is not an area. It is a community. The Audio Services Division’s own Atlas identifies Big Sur as a community, at reference coordinates North Latitude 36° 13’ 13” West Longitude 121° 48’ 22”. See attached printout. The U.S. Geological Survey places the community of Big Sur squarely on the map, which is titled, appropriately, the Big Sur Quadrangle. See attached printout.

Coyote’s counterproposal for Big Sur is technically correct and substantially complete. KNT0’s citations are entirely inapposite.<sup>1</sup> Upon public notice of Coyote’s counterproposal, Coyote is prepared to meet its burden as a proponent of the allotment, consistent with the requirements specified in the Commission’s Appendix, which states, as to showings required: “The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted, and, if authorized, to build a station promptly.”<sup>2</sup> See attached Declaration of Peter Mieuli. Equally so, if the Commission has reservation whether Big Sur is a community, it may require Coyote to adduce evidence in support of that claim under Section 1.421, and

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<sup>1</sup> *Fort Bragg, California*, 6 FCC Rcd 5817 (MMB 1991) involved a counterproposal that was technically and procedurally defective for reasons unrelated to the specification of a community of license; *Provincetown, Dennis, Dennis Port, West Yarmouth and Harwich Port, Massachusetts*, 8 FCC Rcd 19 (MMB 1992), involved an improperly signed and verified counterproposal; *Sanford and Robbins, North Carolina*, 12 FCC Rcd 1 (MMB 1997), held that an expression of interest contained solely in an engineering statement does not render a counterproposal incomplete.

<sup>2</sup> In *Pike Road and Ramer, Alabama*, 10 FCC Rcd 10347 (MMB 1995), on which KNT0 expressly relies, the Commission accepted and placed on Public Notice the counterproposal for Ramer. *Id.*, at n. 2.

Coyote will gladly do so.<sup>3</sup>

### **KNTO's Counter-Counterproposal is Impermissible**

KNTO counter-counterproposes to allot Channel 236A at Big Sur, which it is, of course, not permitted to do in a reply pleading. Moreover, despite its contention that an alternative channel is available, KNTO's express disavowal of interest in applying for a station there, Technical Statement at n. 4, deprives the counter-counter of any substance.

### **Support For A *Tuck* Showing**

KNTO argues that Coyote's use of terrain data is inappropriate to demonstrate the need for a *Tuck* showing. The argument is inapposite and misleading. The Commission's standard prediction methodology is indeed normally employed in allotment proceedings to determine, for example, that a proposal will provide requisite service to the entire proposed community of license,<sup>4</sup> or to ascertain gain and loss areas for purposes of determining preferential arrangement of allotments.<sup>5</sup> KNTO cites no case, however, in which the Commission has limited an evaluation of need for a *Tuck* showing to the standard prediction methodology.

The cardinal facts underlying the essential policy reasons supporting the use of

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<sup>3</sup> The Commission commonly requests additional information of a proponent at the Notice of Proposed Rule Making stage of a proceeding. This is precisely what the Commission did in the Notice in *Benavides, Bruno and Rio Grande, Texas*, 10 FCC Rcd 5984 (1995), the Report and Order in which proceeding KNTO relies on. "[P]etitioner should present the Commission with sufficient information to demonstrate that Bruni is incorporated, or that it has social, economic, cultural, or governmental indicia to qualify it as a 'community' for allotment purposes." *Id.* at ¶ 3 (footnote omitted). A counterproposal is not subject to a different threshold standard.

<sup>4</sup> See, e.g., *Caldwell, College Station and Gause, Texas*, 15 FCC Rcd 3322 (1998).

<sup>5</sup> See, e.g., *Meeker and Craig, Colorado*, DA 00-2714, MM Docket No. 00-120 (released December 1, 2000), cited by KNTO.

terrain data in *Woodstock and Broadway, Virginia*, 3 FCC Rcd 6398 (1988), are present here. First, KNT0's proposal is not a new allotment for which the Commission will accept competing expressions of interest – it will not become available for general application. *Id.*, at ¶ 10. Second, KNT0's proposed allotment is site-restricted 7.7 km east of Chualar to avoid short-spacing to KBOQ, Channel 238A, Carmel, Petition for Rule Making, Technical Statement, at ¶ 3. Third, KNT0's proposal is based on the use of an existing transmitter site, Petition for Rule Making, at 3, and that site is the location of the noncommercial educational FM broadcast station that operates at Chualar, KHDC. *Woodstock*, at ¶ 10; *see also Cloverdale, Montgomery and Warrior, Alabama*, FCC 00-169, MM Docket No. 94-78, at ¶ 11 and notes 6-7.

The *Woodstock* exception exists to enable a petitioner to demonstrate compliance with the community coverage requirement. The public interest compels the corollary, that in the same limited circumstances, terrain data may be employed to demonstrate a petitioner's noncompliance with agency allotment policy such as *Tuck*.

### **KHDC Does Not Mean Chualar is a "Community"**

KNT0's claim that the Commission has "already afforded Chualar 'community status,'" by virtue of the location of Noncommercial Educational FM Broadcast Station KHDC there, cannot be sustained. KNT0 Reply at 5. The Commission did not allot reserved Channel 215, on which KHDC operates, to Chualar. There was no allotment proceeding addressing Chualar's status as a community for Section 307(b) purposes. KHDC's presence at Chualar does not now preclude Coyote or the Commission from undertaking a Section 307(b) analysis of the community attributes of Chualar.


### **KQLB Is Not An Equivalent**

In an effort to blunt the fact that as Dos Palos's only broadcast station, KNTD would serve that community's unique needs, KNTD argues that KQLB, licensed to Los Banos, is an English-language station that "is providing the same technical level of service." KNTD Comments at 9. This is untrue in two respects. First, KQLB's service commitment is primarily to its community of license, which is not Dos Palos. Second, KQLB is a Portuguese-language station. See attached Declaration of Peter Mieuli. KQLB cannot, therefore, be said to be targeting the needs of either the English- or the Spanish-speaking communities of Dos Palos.

### **Conclusion**

Big Sur is a community, and Coyote's counterproposal merits consideration. Chualar's community status is questionable and it warrants a *Tuck* review. KNTD's relocation from Dos Palos would disserve that community.

**COYOTE COMMUNICATIONS, INC.**

By   
John Wells King  
Its Attorney

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December 12, 2001

Frames for Atlas - Microsoft Internet Explorer

File Edit View Favorites Tools Help

Back Forward Stop Refresh Home Search Favorites History

Address <http://www.fcc.gov/mmb/asd/bickel/atlas2.html> Go

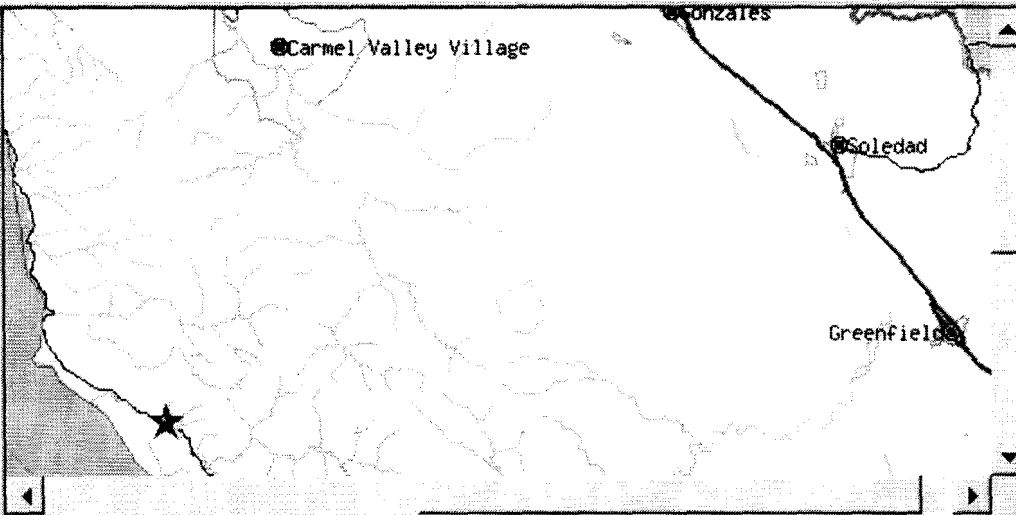
**FC Federal Communications Commission** Find Community Coordinates

**BIG SUR, CA**

BIG SUR , CA

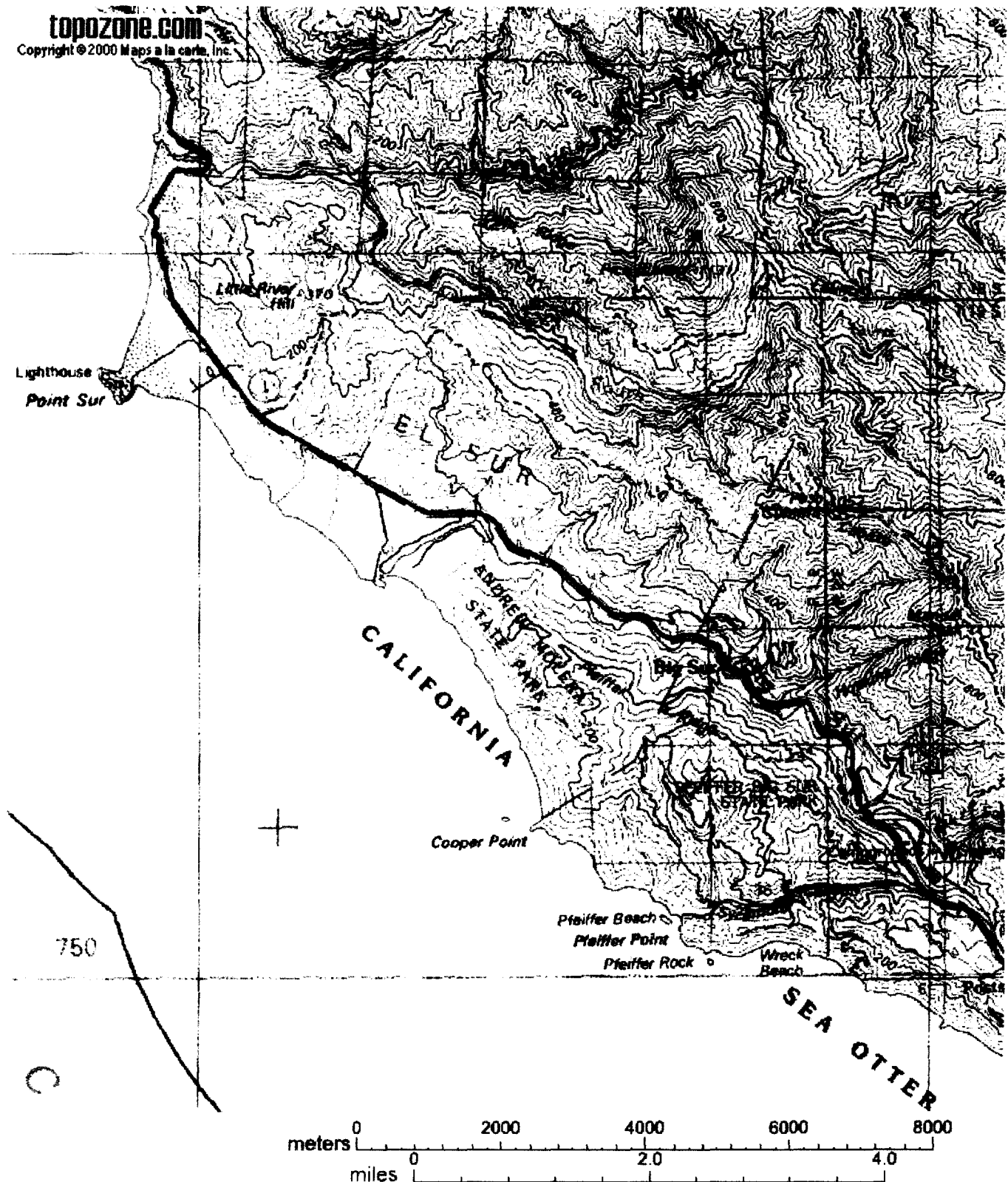
Latitude: N 36 16  
13  
Longitude: W 121 48  
22

Map of Coordinates



ASD Main Page -- [ASD Alphabetical Index](#) -- [FCC Search Engine](#) -- [Allocations Branch](#) -- [Mass Media Bureau](#)

Internet

**TopoZone.com**Target is 36° 16' 13"N, 121° 48' 23"W - **BIG SUR** quad [Quad Info]

## DECLARATION OF PETER MIEULI

I, Peter Mieuli, Vice President of Coyote Communications, do hereby declare and state as follows:

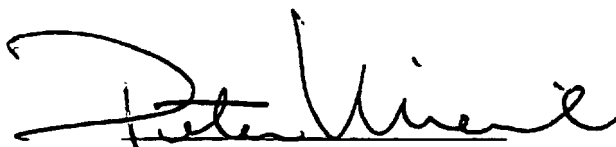
1. I am Vice President of Coyote Communications, Inc. In that capacity I am familiar with the program services and formats of radio stations in Northern and Central California.

2. I have personal knowledge that FM Station KQLB, licensed to Los Banos, California, broadcasts in the Portuguese language to the Portuguese community within its service area.

3. As a resident of Northern California, I have visited Big Sur many times in my life. It is a wonderful community that deserves a radio station to serve the residents, the commercial and educational interests of the area, and the many tourists that visit each year. I will file comments in support of my proposal for Big Sur that definitively establish its community status for purpose of awarding an FM channel to the community.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 11 day of December 2001.




Peter Mieuli

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the attached Comments and Counterproposal of Coyote Communications, Inc., was served this date, by U.S. Postal Service First Class mail, postage prepaid, or \*hand-delivered, upon the following:

Dan Alpert  
The Law Office of Dan J. Alpert  
2120 N. 21st Road  
Arlington, VA 22201

- Kathleen Scheuerle  
Allocations Branch  
Policy and Rules Division  
Mass Media Bureau  
Federal Communications Commission  
Washington, DC 20554

  
\_\_\_\_\_  
Amy L. Bowling

December 12, 2001